

chapter 15

Superfund



Superfund

Program Assistance

A **bandoned or Contaminated Sites** - To report a site that appears to be abandoned or contaminated, contact the nearest TNRCC Region Office (see Chapter 1) or call the Environmental Emergency Hotline at 800/832-8224.

Cleanup Remedies - For questions on the cleanup remedy for a site, contact Superfund Engineering at 512/239-2425.

Community Involvement or Technical Issues - For questions on community relation plans, contractor costs and oversight, division policies and standard procedures, contact Technical Support at 512/239-2458.

Emergency Spills - To report an emergency or spill, call the 24-hour Environmental Emergency Hotline at 800/832-8224.

Environmental Sampling - For questions on environmental issues at a site, contact Superfund Investigation at 512/239-2477 or Preliminary Assessment/Site Investigation at 512/239-2512.

Spills/Site Information - For questions on a spill, site ranking, site assessment, site referral to EPA, Natural Resource Damage Assessments, or assistance with local government emergency response reimbursements, contact Emergency Response at 512/239-2508.

Superfund Sites or State Superfund Quarterly Reports - To receive a report or an update on a site, contact Community Relations at 800/633-9363.

Voluntary Cleanup - For assistance with voluntary remediation actions, contact Voluntary Cleanup at 512/239-2498 or 239-2486.

Federal and State Authority

Federal Superfund

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes EPA to take response actions at a site (federal-lead) or to transfer the necessary funds and management responsibility to a state (state-lead). Federal, state, and local governments work together to identify and respond directly to hazardous substances sites.

The National Oil and Hazardous Substance Contingency Plan (NCP) provides the master plan for Superfund response at a federal site, regardless of who has the lead. CERCLA and NCP assure state involvement by requiring EPA to work with states during: 1) negotiations with

potentially responsible parties (PRPs); 2) the National Priorities List (NPL) listing and delisting process; 3) evaluation of the site to determine remediation options; and 4) selection and implementation of the remedy.

CERCLA, as amended, prohibits EPA from undertaking a fund-financed remedial action unless a state makes the following assurances or guarantees: 1) pays part of the remediation cost; 2) assures adequate state disposal capacity for 20 years; 3) operates and maintains the selected remedy once remediation is complete; and, 4) assumes full responsibility for future operation and maintenance.

State Superfund

Only the highest ranking sites nationwide are eligible for the NPL. The 69th Texas Legislature established a State Superfund program to address those sites not qualified for the NPL, but which pose a substantial threat to public health and/or the Texas environment.

The State program is run solely by TNRCC, which lists State Superfund sites on the Texas State Superfund Registry. The state must comply with federal laws, but EPA approval of State Superfund projects is not required. Funding at a State Superfund site may come from one of two sources, in order of preference: 1) responsible party funding or an independent third person; and, 2) State funds from the Hazardous Waste Remediation Fee Fund.

Program Operations

Voluntary Cleanup

The Voluntary Cleanup Program (VCP) encourages environmental cleanup and redevelopment of properties currently abandoned or dormant as a result of potential Superfund liability concerns. This program is tailored to the needs of many small businesses and local governments, and emphasizes collaboration with the financial and regulated parties, as it promotes environmental cleanup through economic incentives, not regulatory mandates.

A person must apply to participate in the program, provide an environmental assessment and pay an application fee of \$1,000 for basic oversight costs. If the site is under enforcement or is subject to a TNRCC permit or order, it may

be rejected from the program.

The voluntary cleanup agreement between the TNRCC and the applicant must describe the work plans and reports to be submitted to the Agency, a schedule of payments for oversight costs, and the statutes and rules that must be met during the cleanup. The future land use must also be considered in any work plans and reports. The TNRCC cannot initiate an enforcement action while a site is in this Program.

Once the site has been remediated, TNRCC will issue a Certificate of Completion to the entity exempting future owners or lenders from liability to the State of Texas for any past contamination of the site. This exemption is not valid if the land use designation changes. For more information, contact VCP at 512/239-2498 or 512/239-2486.

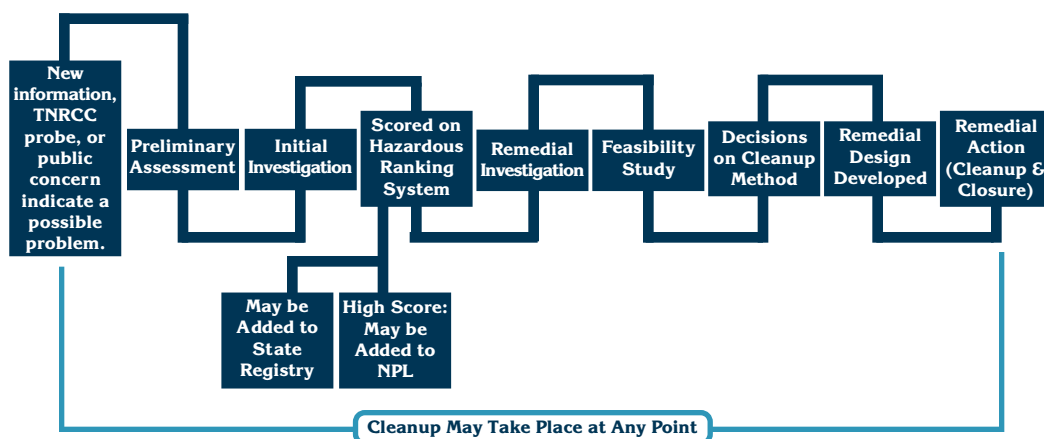
Superfund

Steps in the Superfund process are similar for both the Federal and State Superfund programs and are outlined in Figure 1.

Community Relations Plans (CRP)

EPA and TNRCC operate a Superfund Community Relations Program to guarantee that local citizens are involved in decisions about Superfund actions in their communities. This program alerts area citizens to any hazardous waste response action planned or underway in their community, and gives local citizens an opportunity to participate in

Figure 1
Steps in the Superfund Process



decisions that may affect them.

EPA and/or TNRCC prepare a CRP for all Superfund phases. The plan outlines in detail the activities that provide local residents opportunities to express their opinions and concerns about a site. The CRP is placed in a local repository, such as a library, for public access and review.

Site Discovery

Identification of a potential site may result from numerous actions, including citizen complaints, TNRCC inspections, referral from other programs, bankruptcy actions, property transactions, and spill incidents.

Preliminary Assessment (PA)

The TNRCC and/or EPA officials research the site's history to determine when and by whom the site was abandoned and what remains on site.

Citizens can often provide EPA and TNRCC information about the history of a site that is useful in planning a response action. Knowledge about when and how a site was contaminated can help target areas where intense sampling and monitoring may be needed. Additionally, community members may be able to provide valuable information regarding the identity of those responsible for contaminating the site.

Site Inspection (SI)

The TNRCC or EPA staff makes an initial inspection of the site and may take samples of wastes, water, soil and air. Based upon the information collected during the PA and SI, the site may be evaluated using the Hazardous Ranking System.

Hazardous Ranking System (HRS)

The HRS is the scoring system developed by EPA to determine which sites qualify for proposal to the NPL. An NPL listing qualifies sites for Federal Superfund Response Trust money for remediation activities. EPA may also determine that no further action is warranted at a site. Sites that do not make the NPL may be placed on the Texas State Superfund Registry and be eligible for remediation under the Texas Superfund Program.

Removal Actions

Before a site is added to the NPL or the State Superfund Registry, it may require immediate response activities, commonly referred to as removal actions. A removal action is a short-term response intended to stabilize a site to prevent harm to human health and the environment. Community involvement is limited as there is often very little time to involve citizens in the site removal activities due to the urgency of the problem.

Remedial Investigation/ Feasibility Study (RI/FS)

If a site is placed on the NPL, EPA or the TNRCC may conduct a more comprehensive site evaluation called a remedial investigation and feasibility study (RI/FS). If a site fails the NPL test, but qualifies for the State Superfund, TNRCC will conduct an RI/FS. The RI collects and analyzes the information needed to determine the extent and nature of the contamination and the potential risks to human health and the environment. The FS identifies and evaluates possible technical remedies for the site. Removal Actions may also be performed during the RI to facilitate the investigation.

Public Comment Period

A key focus of input from citizens is a 30-day public comment period for the selection of the remedy for the site. Citizens may comment on possible long-term remedies which are under consideration for the site, either in writing or at a public meeting that occurs after the feasibility study is completed. The feedback that EPA and TNRCC receive from the affected community during the comment period is considered in selecting remedial actions.

Remedy Selection

Following the public comment period, a specific remedy plan is chosen. Under the federal statute this plan is outlined in the Record of Decision (ROD), a public document that sets cleanup standards and selects the remedy to be used at the site.

Under the State Superfund program, TNRCC issues a Proposed Remedial Action document for public comment. After reviewing any public

comment and after providing PRPs an opportunity to participate in the proposed remedy, TNRCC issues a Final Administrative Order. This order sets cleanup standards, selects the remedy, identifies responsible parties, and allocates responsibility for implementing the remedy plan.

Remedial Design (RD)

The final engineering plan, or remedial design (RD) of the remedy is drafted after the ROD or Final Administrative Order has been signed. The final engineering plan includes plans and specifications on how the remedial action will be accomplished.

Remedial Action (RA)

After the remedial design is complete, remedial action can begin. Some remedial actions may be completed in phases, such as a source control phase (remove source of contamination) followed by a groundwater treatment phase. Because some remedial actions are complex environmental remedies, they may require years to complete.

Operation and Maintenance

After RD/RA activities have been completed, the site is monitored to ensure the effectiveness of the remedy. Certain measures require ongoing operation or periodic maintenance. This final step is referred to as the Operation and Maintenance Phase.

Fees

The Solid Waste Disposal Act establishes the Hazardous and Solid Waste Remediation Fee Fund (HSWRFF) to provide the necessary financial resources for Texas to participate in the Federal Superfund program and conduct the State Superfund program. The state Superfund program turns first to PRPs and only funds response actions using the HSWRFF when the responsible parties are unable or unwilling to perform the necessary actions, or where an emergency response (i.e., removal action) is required.

TNRCC collects money from the following sources to support the HSWRFF:

- ▼ The Hazardous Waste Management Fee which is levied on owners or operators of industrial solid waste or hazardous waste facilities;

- ▼ Fees from the sale of lead-acid batteries;
- ▼ Money paid by a PRP for a facility cleanup; and
- ▼ Interest received from the investment of this fund.

Enforcement

Federal Superfund

CERCLA authorizes EPA to pay for the costs of remediating Superfund sites. However, EPA prefers to finance site remediation through PRP enforcement. The enforcement process used by EPA consists of five major efforts:

1.) EPA attempts to identify PRPs as early in the Superfund process as possible. Once identified, EPA will notify these parties of their potential liability at the site.

2.) EPA will encourage PRPs to undertake remediation at a site.

3.) If EPA believes the PRPs are willing and capable of doing the work, EPA will attempt to negotiate an enforcement agreement. The enforcement agreement may be entered in court (such as a judicial consent decree) or it may be an administrative order (where EPA and the PRPs sign an agreement outside of court). EPA oversees the PRP activity under both of these agreements, which are enforceable in court.

4.) If a settlement is not reached, EPA may either use its authority to issue a unilateral administrative order, or file suit against the PRPs. These actions direct PRPs to perform or pay for removal or remedial actions at a site. If the PRPs do not respond to a unilateral administrative order, EPA may file a lawsuit.

5.) If PRPs do not perform the response action and EPA undertakes the work, EPA may file suit against the PRPs to recover money spent by EPA and deposit it in the Superfund Trust Fund. This is called cost recovery, and it is a major priority under the Superfund program. Recalcitrant PRPs are liable for triple damages under this scenario.

State Superfund

TNRCC also encourages PRPs to participate in the Superfund process. If the PRP comes forward, TNRCC will oversee activities to ensure that all threats to human health and the environment are addressed, and that procedures comply with all applicable environmental regulations.

PRPs are given the opportunity to make a good faith offer and enter into an agreed order with TNRCC. This order outlines the technical recommendations for the PRPs to follow during the RI/FS. The agreed order does not indicate liability or full responsibility for the project. At the time of remedy selection PRPs are offered the opportunity to conduct the selected remedy under the final administrative order.

If the responsible parties are unwilling to cooperate, TNRCC can issue an administrative order or take legal action requiring them to participate in the Superfund process. If the PRPs ignore this order, they may be held liable for punitive damages up to triple the costs of the TNRCC actions at the site.

In Addition

Frequently Asked Questions

What does the Federal Emergency Response Reimbursement Program cover?

The Emergency Response Reimbursement Program is designed to alleviate significant financial burdens on local governments resulting from temporary emergency measures taken in response to hazardous substance, pollutant, or contaminant threats. Temporary emergency measures may include such activities as erecting security fences to limit access, responding to fires and explosions, and other actions that require immediate response at the local level. EPA will distribute the reimbursement money to those applicants who demonstrate the greatest financial burden.

Who can request reimbursement?

Any general purpose unit of local government that incurs costs in response to a release or threatened release of hazardous substances,

pollutants, or contaminations may apply for reimbursement. Reimbursement is available only to local governments (e.g., a county, parish, city, or federally recognized Indian Tribe). States are not eligible for reimbursement for temporary emergency measures and no state may request reimbursement on its own behalf or on the behalf of political subdivisions within the State.

Only one request for reimbursement will be accepted for each hazardous substance release or threat requiring immediate response at the local level. When more than one local agency has participated in a response, those agencies must determine which single agency or jurisdiction will submit the request on behalf of them all. Since funds for this program are limited, EPA may not be able to reimburse local governments for all responses that may qualify.

Where can applications for reimbursement be obtained?

An application package can be obtained by contacting the RCRA/Superfund Hotline at EPA Headquarters, 800/424-9346. The application package contains detailed instructions for completing the application form.

When should reimbursement requests be filed?

Requests must be received by EPA within one year of the date of completion of the response for which reimbursement is being requested.

Other Assistance

Technical Assistance Grants (TAGs)

Established in 1986 by Congress, the TAG Program provides grants for groups of individuals to hire independent technical advisors who can help them understand technical information, findings, and recommendations related to an NPL Superfund site. An initial grant of up to \$50,000 is available for any site on the NPL or proposed for listing where EPA has begun a response action. More information can be obtained by contacting EPA Region VI, Information Management & Hazardous Waste Section at 214/665-6518.

Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases

Under CERCLA Chapter 123, local governments can request reimbursement from the Federal Superfund for temporary emergency measures taken to prevent or mitigate injury to human health, welfare, or the environment from a release or threatened release from any site. Reimbursement cannot exceed \$25,000 for a single response. For assistance contact Emergency Response at 512/239-2508. For Application forms, contact EPA at 800/424-9346.

State Superfund Quarterly Status Reports

The Quarterly Status Report is designed to ensure that the public is informed about the progress of each State Superfund site. Each site listed includes information on the county, the TNRCC contact, the consultant, the site background, recent developments, and the anticipated action. To receive a copy of this report, contact the appropriate TNRCC Project manager or the Superfund Community Relations Assistant at 800/633-9363.

Significant Laws and Regulations

The following is a brief summary of the federal and State laws and regulations relating to emergency response and Superfund cleanup. Please refer to the official rules for specific questions regarding compliance and applicability. The TNRCC publication "Regulatory Resource" (GI-32) contains detailed information about obtaining copies of the Agency's rules (see Appendix 4). The TNRCC Rules are also accessible from the Agency's bulletin board. Refer to OnLine Services in Chapter 2 for more information.

Federal Laws

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Places a tax on the chemical and petroleum industries to provide a funding base for the Federal Superfund.

Authorizes the federal government to take direct action or force the responsible party to respond to emergencies or potentially dangerous sites that involve uncontrolled release of hazardous substances.

Superfund Amendments and Reauthorization Act (SARA)

Strengthens and expands the cleanup program.

Increases the size of the trust fund.

Stresses the development of permanent remedies.

Adds more enforcement and settlement tools.

Adds Title III Community Right-To-Know, a free-standing statute, increasing community awareness and access to information regarding the presence of extremely hazardous chemicals in their community.

Oil Pollution Act of 1990 (OPA)

Addresses oil pollution liability and compensation for spills in navigable waters.

Federal Regulation

40 CFR, Part 300 (National Contingency Plan), Sub-Part F (State Involvement)

Outlines a step-by-step process for conducting both removal and remedial actions.

Defines the roles and responsibilities of EPA, other federal agencies, the State, private parties, natural resource trustees and communities in response to situations in which hazardous substances or oil are released into the environment.

State Laws

Solid Waste Disposal Act (SWDA), Texas Health and Safety Code (THSC) Chapter 361 Subchapter F, Registry and Cleanup of Hazardous Waste Facilities

Provides the primary statutory basis for State management of solid and hazardous wastes and substances, and the cleanup of sites.

Creates the State Superfund program. The primary sections of the SWDA applicable to the State Superfund program are codified in THSC Chapters 361.181 - 361.197 and 361.271 - 361.280.

*Oil and Hazardous Substances Spill Prevention Control Act, Texas Water Code (TWC)
Chapter 26 Subchapter G, Coastal Oil and Hazardous Spill Prevention and Control*

Requires government entities to coordinate and cooperate in spill response.

Outlines under what conditions the Texas Spill Response Fund may be used.

Describes the penalties that may be assessed for violations of the TWC.

Oil Spill Response and Prevention Act (OSRPA)

Addresses oil pollution liability and compensation for oil spills to coastal waters in Texas.

*Voluntary Cleanup Act,
THSC Chapter 361 Subchapter S*

Establishes the VCP and authorizes TNRCC to collect fees to cover administrative costs.

State Regulation

*30 TAC Chapter 335 Subchapters A and S,
Risk Reduction Rules, and Subchapter K,
Assessment and Remediation*

Implements the requirements of the SWDA for the Texas Superfund Program.

Provides cleanup standards and methodology for the cleanup of sites.